

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RAFAEL ALEJANDRO LIRIANO URENA, et al. :	
<i>individually and on behalf of others similarly</i> :	
<i>situated,</i> :	
Plaintiff, :	<u>ORDER</u>
:	
:	20 Civ. 3751 (GBD) (GWG)
-v.- :	
0325 TUTA CORP. d/b/a LA GRAN :	
ANTILLANA, et al., :	
Defendants. :	
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GABRIEL W. GORENSTEIN, United States Magistrate Judge

On September 27, 2022 plaintiffs sought leave to file a supplemental application for attorneys' fees accompanied by a "sworn statement attesting to the number of hours worked and that the time records were contemporaneously made." (Docket # 90). On September 29, 2022, the district court granted the request (Docket # 91), and on October 5, 2022, plaintiffs' attorney filed a declaration regarding the billing records. (Docket # 92).

Billing records are contemporaneous where they demonstrate that attorneys "made contemporaneous entries as the work was completed." See Cruz v. Local Union No. 3 of Intern. Broth. of Elec. Workers, 34 F.3d 1148, 1160 (2d Cir. 1994); accord Trustees of N.Y.C. Dist. Council of Carpenters Pension Fund, Welfare Fund, Annuity Fund, and Apprenticeship, Journeyman Retraining, Educ. & Indus. Fund v. Northe Group, 2022 WL 2125482, at *4 (S.D.N.Y. June 13, 2022). Thus, a fee applicant must prove that the entries on which any compilation of records is based were "prepared at or near the time of work performed." Rivera v. Hudson Valley Hosp. Group, Inc., 2019 WL 3955539, at *5 (S.D.N.Y. Aug. 22, 2019).

The declaration of plaintiffs' attorney provides no evidence on this point, stating only that the attorneys recorded the time "accurately and not in a random manner." (Docket # 92 at ¶ 8). In other words, the declaration does not state when the individual entries were created in relation to the tasks that were performed on the case. As a result, the Court cannot find that the records submitted are contemporaneous time records.

Plaintiffs are granted leave to file an affidavit by October 21, 2022 addressing this issue. If no further affidavit is filed, the Report and Recommendation will not be amended and the case will be decided on the current record.

SO ORDERED.

Dated: October 17, 2022
New York, New York



GABRIEL W. CORENSTEIN
United States Magistrate Judge